IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.991 OF 1996

M/s.S.Mohd.Ayub Yaqub ...Appellant

Vs.

Municipal Corporation of
Greater Bombay & Ors. ...Respondents

Ms J.P.Thakkar for the Appellant
Ms Geeta Joglekar for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: APRIL 26,2005.

P.C.:

1. Heard Advocates for the parties. Appeal is preferred by the original Plaintiff for taking exception to the Judgment and Order dated 25th July 1996. By the impugned Judgment and Order, Notice of Motion for temporary injunction filed by the Plaintiff has been dismissed.

2. The case of the Appellant-Plaintiff is that in the year 1983-84 he acquired tenancy rights in respect of the suit shop. The suit shop had already a mezzanine floor. The Appellant-Plaintiff applied for repair permission through an architect. The said application was considered by the Respondent No.1-Corporation and the plan was approved. However, there was a dispute between the Appellant and the Respondent Nos.2 to 8 who are the landlords. A notice dated 2nd May 1990 was issued by the Respondent No.1-Corporation under section 351 of Mumbai Municipal Corporation Act,1888 alleging unauthorised construction of mezzanine floor. The

notice was replied to by the Appellant. After considering the reply, an order was passed by the Deputy Municipal Commissioner on 31st October 1990. A suit was filed by the Appellant in the City Civil Court. The Court directed the Deputy Municipal Commissioner to give hearing and pass the speaking order. By a speaking order, the Deputy Municipal Commissioner rejected the representation made by the Appellant and therefore a Notice of Motion was taken out. By the impugned order the said Notice of Motion has been dismissed.

3. On 30th September 1996, Appeal was admitted and the interim injunction was granted. This Court directed the Appellant to file an application for regularization within a period of two weeks.

4. The learned Counsel for the Appellant submitted that impugned action was taken by the Respondent No.1 as an outcome of dispute between the Appellant and Respondent Nos.2 to 8. She stated that now the dispute between the Appellant and the Respondent Nos.2 to 8 is settled and the Respondent Nos.2 to 8 have withdrawn their objections. A reliance is placed by the learned Counsel on the decision of this Court reported in 1997 VI LJ page No.883 (Alpic Finance Ltd. Vs.Municipal Corporation of Greater Bombay).

5. The learned Counsel for Respondent No.1 submitted that

the proposal for regularization has been rejected. She therefore submitted that no case is made out for grant of interim relief. The learned Counsel for Respondent Nos.2 to 8 states that he has not received any instructions from his clients regarding alleged settlement between the Appellant and his clients.

6. I have considered the rival submissions. It is to be noted that in a suit filed in the year 1990, all along the suit structure has been protected by the orders passed by this Court and the Trial Court. The ad-interim order of injunction is operating in this Appeal from 30th September 1996 i.e. for last more than 8 years. This Court in the decision in the case of alpic Finance (supra) observed that the Deputy Municipal Corporation of the Respondent No.1-Corporation has issued circular on 25th September 1997 informing the Ward Officers not take actions against mezzanine floor/lofts constructed on or before 15th August 1997 till the matter is finalised by the administration. It is not in dispute that the policy adopted by the Respondent No.1-Corporation of regularising the mezzanine floor/lofts constructed on or before 15th August 1997 is under consideration of the State Government for approval. In the present case, notice is issued by the Respondent No.1-Corporation as regards alleged construction of mezzanine floor in the year 1990.

7. Considering all the aforesaid facts of this case, protection granted to the Appellant deserves to be continued till the final disposal of the suit.

8. Hence, I pass the following order :

i) Impugned Judgment and Order is set aside. Appeal from Order is allowed. Till the final disposal of the suit, interim order passed by this Court dated 30th September 1996 in terms of prayer clause (a) of Civil Application No.5200 of 1996 will continue to operate.

ii) All contentions of the parties in the pending suit are expressly kept open.

Judge.